IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.368 of 2006

Judgment reserved on: April 25, 2007

Decided on : May 1, 2007.

Devinder Singh @ Billa and others **…..Appellants.**

VERSUS

State of Himachal Pradesh **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. Pawan Gautam, Advocate.**

For the Respondent : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge

Feeling aggrieved by the judgment of the Sessions Court, whereby they have been convicted of offences, under Sections 395 and 342 read with Section 34 IPC and Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for offence under Section 395 read with Section 34 IPC and in default of payment of fine to undergo simple imprisonment for thee months; to undergo rigorous imprisonment for six months for offence under Section 342 read with Section 34 IPC; and to undergo simple imprisonment for three years and a fine of Rs.1,000/- for offence under Section 25 of the Arms Act and in default of payment of fine to undergo simple imprisonment for two months, the appellants have filed the present appeal seeking the reversal of the order of conviction and sentence.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. First, the prosecution version may be summed up. On 5.3.2005, an Indica Car No.HP-20B-1005 owned by Ramesh Mehta, a resident of Una, was hired by two of the appellants, namely Rajinder Singh alias Kuki and Sajjan Singh, for going to village Jhungia. When the vehicle was taken to the Petrol Pump for filling fuel, four more persons, including the three other appellants, namely Devinder Singh, Bikram Jit Singh and Mohammad Rashid, boarded it. Thereafter, the vehicle proceeded towards village Jhungia with PW-10 Surinder Kumar its driver in the driver's seat. On the way, the vehicle was got stopped by one of the appellants, as he wanted to vomit. Two other appellants also alighted to urinate. One of the appellants then asked the driver to take out the bottle of water from the car. When he was taking out the bottle, one of the appellants placed the barrel of a country made pistol on his head and another appellant placed another pistol on his abdomen and asked him to sit on the rear seat of the car. One of the appellants then started driving the car. Two of the appellants placed two country-made pistols on two sides of the abdomen of driver PW-10 Surinder Kumar and threatened him that in case he raised alarm, he will be shot dead. Finally, the vehicle was taken towards Naina Devi road and it was stopped in the forest about 2-3 Kms. ahead of a place known as Kolan Da Toba. That was a lonely place. The driver of the car was made to de-board it. He was taken to the forest. There his hands and feet were tied and then he was tied to a tree. In fact, the appellants wanted to kill him, but on his pleading with them for sparing his life as he was a poor driver, they took pity on him. They left the place threatening that in case he lateron identified them or

lodged a report with the Police, he will be done to death. The appellants then left in the car. The driver managed to untie himself from the tree but he could not undo the knots of rope binding his hands and feet. Somehow or the other, he reached the road-head. Two persons riding a motorcycle happened to pass along the road. The driver requested them to untie the knots of the rope. They helped the driver to free himself. The driver then made a call to the owner of the car, namely PW-1 Ramesh Mehta, who immediately informed the Police. Next day, the driver was taken to Police Station, Una, where the case was registered.

3. A case was registered by CIA staff of Ropar on 24.3.2005, under Sections 399, 402 IPC and Section 25 of the Arms Act, on a secret report that some persons had gathered at a lonely place 3-4 Kms. away from Nangal Town and were planning to commit decoity. The Police surrounded that place and apprehended those persons. The appellants were amongst the apprehended persons. They had parked two cars near the site where they were apprehended. One of these cars was India Car. On the number plates of this car, No.PB-06B-4090 was written. During interrogation, the appellants told that the number plates had been changed by them and that in fact the car had been snatched by them from its driver at Una. CIA staff of Ropar then informed the Incharge of Police Station, Una. The SHO, Police Station, Una, went to Ropar and found that the chassis number and the engine number of the car tallied with the car of PW-1 Ramesh Mehta, bearing registration No.HP-20B-1005, which had been snatched from its driver on 5.3.2005. The Police of Una further investigated the matter and finally challaned the

appellants, under Sections 395, 342, 420 read with Section 34 IPC and Section 25 of the Arms Act.

4. The case was committed to the Sessions Court. It came to be tried by the Additional Sessions Judge, who on the conclusion of the trial acquitted the appellants of the offence under Section 420 read with Section 34 IPC, but convicted and sentenced them for the remaining three counts of charge, as aforesaid.

5. Learned counsel representing the appellants submitted that there was no evidence, except the bald statement of PW-10 Surinder Kumar, to connect the appellants with the alleged crime. He urged that, as per testimony of PW-10 Surinder Kumar, he was helped by riders of a motorcycle in untying the knots of the rope, but they had not been examined by the prosecution. He also submitted that according to driver's own testimony a scooterist provided his mobile phone to make a call to the owner of the car, but that scooterist had also not been examined.

6. I have considered the aforesaid submissions, in the light of the evidence on record. There is nothing on record that PW-10 Surinder Kumar had ascertained the names of the motorcycle riders or the scooterist or had even noted down the numbers of the motorcycle and the scooter and if it is so it was not easy for the investigating agency to find out who those motorcycle riders and the scooterist were. No suggestion was put to PW-10 Surinder Kumar, the driver of the car, on behalf of the appellants, during the course of his cross-examination about motorcycle riders or the scooterist. The driver was supposed to be under shock and fear and in that state of mind he might not have even though of noting down the numbers of

the motorcycle and the scooter or ascertaining the names of motorcycle riders and the scooter for being disclosed to the Investigating Agency.

7. Conviction of the appellants is not based on the sole uncorroborated testimony of PW-10 Surinder Kumar. His testimony is corroborated by the fact that the car, in question, was recovered from the appellants. The fact of the recovery of the car from the appellants is proved by the testimony of PW-16 SI Gurdeep Singh. The witness has stated that the car was recovered from the appellants at a place near Nangal after 12 on the night intervening 24th and 25th March, 2005 and was taken into possession vide Memo. copy Ex. PW-16/H. The witness has stated that on the number plates fitted on the car, No.PG-06B-4090 was written and that during interrogation when the appellants disclosed that the car had been robbed from its driver in the area of Una District, he informed the SHO, Police Station Una, through writing, copy Ex. PW-16/I. PW-19 SI Bidhi Chand, the then SHO, Police Station Una, testified that he went to CIA Office, Ropar, on getting the information, vide letter copy Ex. PW-16/I, and found an Indica Car in the compound of CIA staff Office and that when he checked the Chassis number and the Engine number, the same tallied with the car of PW-1 Ramesh Mehta, which he had entrusted to his driver PW-10 Surinder Kumar and from whom it had been robbed on 5.3.2005. Thus, the testimony of PW-10 Surinder Kumar stands corroborated by the fact of recovery of the car from the appellants and this fact of recovery of the car is proved by PW-16 SI Gurdeep Singh and PW-19 SI Bidhi Chand.

8. As a result of the above discussion, the submissions made on behalf of the appellants are rejected. No other point had been urged on behalf of the appellants, as regards the order of conviction is concerned.

9. Learned counsel for the appellants then submitted that the punishment awarded by the trial Court is too harsh and disproportionate to the crime committed. The trial Court has awarded punishment of only three years, though the offence committed by the appellants is of decoity punishable, under Section 395 IPC, with life imprisonment or rigorous imprisonment for a term which may extend to 10 years. Hence, this submission is also rejected.

10. As a result of the above discussion and findings, appeal is dismissed.

May 1,2007(sd) **(Surjit Singh), J.**